

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK S. BOUDREAU
and
JOSEPH L. HODGES IV

Appeal No. 97-4185
Application No. 08/602,274¹

ON BRIEF

Before STAAB, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 7, 9 to 12, 14 and 15. Claims 8 and 13 have been allowed.

¹ Application for patent filed February 16, 1996.

Appeal No. 97-4185
Application No. 08/602,274

We AFFIRM-IN-PART.

BACKGROUND

The appellants' invention relates to a glove drying and shaping device. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Ross	2,783,925	
March 5, 1957		
Sutton	3,486,670	Dec. 30,
1969		

Claims 1 to 7, 9 to 12, 14 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ross in view of Sutton.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the examiner's answer (Paper No. 12, mailed June 11, 1997) for the examiner's complete reasoning in support of the rejection, and to the appellants'

brief (Paper No. 11, filed April 17, 1997) and reply brief (Paper No. 13, filed August 18, 1997) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is sufficient to establish obviousness only with respect to claims 1, 2, 9 to 11 and 15. Accordingly, we will sustain the examiner's rejection of claims 1, 2, 9 to 11 and 15 under 35 U.S.C. § 103. We will not sustain the examiner's rejection of claims 3 to 7, 12 and 14 under 35 U.S.C. § 103. Our reasoning for this determination follows.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18

USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). The conclusion that the claimed subject matter is obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Ross discloses a glove drier. As shown in Figure 1, the glove drier comprises an open-work body portion or palm supporting area 10 and four fixed open-work digits 11, 12, 13 and 14 extending therefrom. Ross teaches (column 3, lines 28-31) that the palm supporting area 10 and the four fixed open-work digits 11, 12, 13 and 14 are all disposed in a single plane. In addition, Figures 1-3 illustrate a ridge structure extending about the periphery of the glove drier. Depending from the palm supporting area 10 is a hook 15 from which the device can be suspended. In addition, the glove drier includes a thumb-supporting element 23 movable between two extreme positions indicated in Figure 1. The thumb-supporting element 23 is movable in a plane spaced from the single plane of the palm supporting area and the four fixed open-work digits. Ross also teaches (column 3, lines 10-11) that the glove drier is intended to be made from thermoplastic material.

Sutton discloses a glove form. As shown in Figure 1, the glove form 10 includes a palm supporting portion 12, four digital or finger-like supporting members 28, 30, 32 and 34,

and a thumb-like supporting member 36. Each of the supporting members 28, 30, 32, 34 and 36 is connected by a rib or element, as at 50, to the palm supporting portion 12. Sutton teaches (column 4, lines 15-42) that each of the individual connecting ribs or elements 50 is relatively thin and flexible, such that each supporting member is flexible and somewhat pivotable with respect to portion 12. In addition, Sutton discloses that the entire glove form lies in a single plane (see Figures 1-3) and teaches (column 2, lines 17-24) that the thumb supporting member 36 is flexible in the plane of the glove form so that the glove form may be easily fitted into a glove. Sutton also teaches (column 5, lines 54-61) that the glove form can be fabricated from thermoplastic material.

Claim 1

Independent claim 1 recites a glove drying device comprising, inter alia, a substantially planar hand-shaped form, a display area and a ridge structure which extends "around a periphery of said planar hand-shaped structure [sic, form]." Claim 1 further recites that the substantially planar hand-shaped form includes a palm portion, a plurality of finger elements and a thumb element connected to the palm portion by a spring member. Claim 1 also recites that the display area is attached to and extends beyond a lower portion of the planar hand-shaped form and consists of a substantially continuous surface for receiving indicia.

In applying the above-noted for obviousness, we reach the conclusion that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the glove drier of Ross by flexibly connecting the thumb-supporting element to the palm-supporting area in the same plane as the palm-supporting area as suggested and taught by Sutton for the advantage of easily fitting a glove onto the glove drier.

The argument advanced by the appellants (brief, pp. 8-12 and reply brief, pp. 2-4) is not persuasive for the following reasons.

First, we agree with the examiner (answer, pp. 3 and 6) that the claimed "display area" reads on the lower planar surface of Ross's glove drier shown in Figure 1 (i.e., the lower planar surface near the hook 15 and below the lower edge of the glove body 27). In proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Moreover, limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Contrary to the appellants' argument, we have determined that the display area recited claim 1 is not limited to areas which can function as a golf bag tag.

Additionally, we find that the lower planar surface of Ross's glove drier is attached to and extends beyond a lower portion of the planar hand-shaped form (i.e., the palm supporting area 10 and digits 11, 12, 13 and 14) and consists of a substantially continuous surface for receiving indicia. In that regard, it is our determination that the area of the lower planar surface of Ross's glove drier shown below glove body 27 is clearly capable of receiving indicia.

Second, we do not agree with the appellants' argument that the combined teachings of Ross and Sutton would not have suggested the claimed thumb element connected to the palm portion by a spring member. It is our opinion that Sutton's teaching of connecting a thumb element (i.e., thumb supporting member 36) to the palm portion (i.e., palm supporting portion 12) by a spring member (i.e., flexible rib 50) does provide sufficient motivation to one skilled in the art to have modified Ross's glove drier as set forth above.

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is affirmed.

Claim 2

Dependent claim 2 has not been separately argued by the appellants. Accordingly, claim 2 will be treated as falling with parent claim 1. See In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); and In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978). Thus, it follows that the decision of the examiner to reject claim 2 under 35 U.S.C.

§ 103 is also affirmed.

Claims 10 and 11

The appellants have grouped claims 10 and 11 as standing or falling with claim 1.² Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 10 and 11 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 10 and 11 under 35 U.S.C. § 103 is also affirmed.

Claims 9 and 15

² See page 5 of the appellants' brief.

Dependent claim 9 adds to parent claim 1 the limitation that the spring member comprises a curved, flat spring member. Dependent claim 15 adds to parent claim 1 the limitation that the spring member comprises an extension of the ridge member.

The appellants argue (brief, p. 14) that the examiner has not shown any prior art teachings of the limitations of claims 9 or 15. We do not agree. As to claim 9, Sutton's rib 50 (i.e., spring member) connecting thumb member 36 to the palm supporting portion 12 is shown in Figure 1 as being a curved, flat spring member. Accordingly, the combined teachings of Ross and Sutton would have suggested using a curved, flat spring member to connect Ross's thumb-supporting element to the palm-supporting area. As to claim 15, it is our determination that the combined teachings of Ross and Sutton would have suggested that the connecting rib be a continuation of the peripheral ridge member provided by Ross. Accordingly, the decision of the examiner to reject claims 9 and 15 under 35 U.S.C. § 103 is affirmed.

Claims 3, 4 and 12

Dependent claim 3 adds to parent claim 2³ the limitation that a slotted tab extends from the display area and beyond the ridge structure.

The examiner stated (answer, p. 4) that "the use of a 'slotted tab' instead of a hook is considered an obvious substitution if desired."

The appellants argue (brief, p. 12) that the examiner's position is not supported by any prior art teaching. We agree. In that regard, the examiner has not provided any evidence that establishes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace Ross' hook with a slotted tab. The mere existence of a slotted tab does not, in and of itself, establish the obviousness of the proposed substitution. Thus, the examiner has not established a proper factual basis to support the rejection of claim 3. Accordingly, the decision

³ Claim 2 depends from claim 1.

of the examiner to reject claim 3, as well as claims 4 and 12 dependent thereon, under 35 U.S.C. § 103 is reversed.

Claims 5 to 7

Dependent claim 5 adds to parent claim 1 the limitation that holding means for securing a glove are located on the thumb element adjacent the spring member.

The examiner stated (answer, p. 4) that "the use of protrusions for better gripping is considered an obvious expedient known in the art."

The appellants argue (brief, p. 13) that the examiner's position is totally unsupported by the record. We agree. In that regard, the examiner has not provided any evidence that establishes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide protrusions (i.e., holding means) on the thumb element adjacent the spring member. The mere existence of protrusions for gripping does not, in and of itself, establish the obviousness of the claimed holding means. Thus, the examiner

has not established a proper factual basis to support the rejection of claim 5. Accordingly, the decision of the examiner to reject claim 5, as well as claims 6 and 7 dependent thereon, under 35 U.S.C. § 103 is reversed.

Claim 14

Dependent claim 14 adds to parent claim 9 the limitation that the spring member is semi-circular.

The examiner stated (answer, p. 4) that the shape of the spring member is an obvious expedient known in the art and that semicircular springs are known in the art to reduce crack propagation.

The appellants argue (brief, p. 14 and reply brief, pp. 3-4) that the examiner has failed to cite any prior art teaching in support of the examiner's determination of obviousness. We agree. In that regard, the examiner has not provided any evidence that establishes that it would have been obvious to one of ordinary skill in the art at the time the

invention was made to replace Sutton's spring member (i.e., rib 50) with a semi-circular spring element. The mere existence of semi-circular spring elements do not, in and of itself, establish the obviousness of the claimed semi-circular spring element in the claimed combination. Thus, the examiner has not established a proper factual basis to support the rejection of claim 14. Accordingly, the decision of the examiner to reject claim 14 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 7, 9 to 12, 14 and 15 under 35 U.S.C. § 103 is affirmed with respect to claims 1, 2, 9 to 11 and 15, but reversed with respect to claims 3 to 7, 12 and 14.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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APPLICATION NO. 08/602,274

APJ NASE

APJ McQUADE

APJ STAAB

DECISION: **AFFIRMED-IN-PART**

Prepared By: Delores A. Lowe

DRAFT TYPED: 07 Jul 98

FINAL TYPED: